

COUNTERPART

No. 1 of 6

SUBLEASE OF RAILROAD EQUIPMENT

Dated as of April 15, 1974

between

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY

as Lessee

and

ALLIED PRODUCTS FINANCE CORPORATION

as Lessor

SUBLEASE OF RAILROAD EQUIPMENT, dated as of April 15 , 1974, between ALLIED PRODUCTS FINANCE CORPORATION (hereinafter sometimes called the Lessor or Allied), and CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY (hereinafter called the Lessee).

WHEREAS, NORTH WESTERN LEASING COMPANY (hereinafter called Vendee), has entered into a Conditional Sale Agreement dated as of April 15, 1974 (hereinafter called the Security Documents), with ELECTRO-MOTIVE DIVISION OF GENERAL MOTORS CORPORATION (hereinafter called the Builder), wherein the Builder has agreed to manufacture, sell and deliver to the Vendee the railroad equipment described in Schedule A hereto;

WHEREAS, the Builder has assigned or will assign certain of its interests in the Security Documents to FIRST NATIONAL CITY BANK (hereinafter, together with its successors and assigns, referred to as the Vendor); and

WHEREAS, the Vendee has leased all the units of said equipment, or such lesser number (hereinafter called the Units) as are delivered and accepted and settled for under the Security Documents on or prior to December 31, 1974 (hereinafter called the Cut-Off Date), at the rentals and for the terms and upon the conditions provided for in said Lease (hereinafter called the First Lease) to Allied Products Corporation; and

WHEREAS, the Lessor has agreed to sublease the units to the Lessee at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions, but, upon default of the Lessee hereunder or under the Security Documents, subject to all the rights and remedies of the Vendor under the Security Documents:

Section 1. Delivery and Acceptance of Units.

The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the First Lease and simultaneously therewith. Upon such delivery, the Lessee will cause an inspector of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit and execute and deliver to the Lessor a certificate of acceptance and delivery (hereinafter called the Certificate of Delivery), stating that such Unit has been inspected and accepted on behalf of the Lessee on the date of such Certificate of Delivery and is marked in accordance with Section 4 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

Section 2. Rental. The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease one interim rent payment in the amount set forth in the next succeeding sentence, if said Units are delivered to Lessee before January 1, 1975, and 24 subsequent consecutive semiannual rental payments in arrears, each such payment in an aggregate amount equal to 6.27% of the Purchase price (as defined in the Security Documentation) of each Unit subject to this Lease, in immediately available funds each payable on January 1 and July 1 in each year, commencing July 1, 1975. The first such rent payment shall be in an amount equal to .03435% of the Purchase Price of each Unit for each day elapsed from and including the date such unit is settled for under the Security Documentation to January 1, 1975, and shall be due and payable on January 1, 1975. The next such 24 rent payments shall be in an amount equal to 6.27% of the Purchase Price of each unit subject to this Lease; provided, however, that if the Lessee performs all the promises and covenants hereunder, and is not in default as defined in Section 9 hereof, the Lessee shall not be liable to the Lessor for and will not have to pay the twenty-fourth and final rental payment.

The Lessor irrevocably instructs the Lessee to make all payments provided for in this Lease other than payments due pursuant to Section 15 hereof in immediately available funds (including but not limited to the payments required under

Section 6 hereof) to the Vendor for the account of the Lessor, on or before the date upon which such payments are due and owing and the Lessee agrees so to do. On or before the date upon which payments to the Vendor under the Security Documents are due and owing, the Vendor is hereby irrevocably instructed to apply funds received hereunder to make such payment to the Vendor. Such payments shall be applied by the Vendor to satisfy the obligations of the Lessor under the First Lease payable at the time such payments are due hereunder (or within six days thereafter) and, so long as no default under the First Lease shall have occurred and be continuing, any balance shall be paid to the Vendee or as directed by the Vendee, who shall forthwith pay to the Lessor the portion thereof, if any, to which it is entitled.

This Lease is a net net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease, or the Builder, the Vendor, or Vendee or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency, bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which

at any time hereafter may be conferred upon it by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof, Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

Section 3. Term of Lease. The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of Section 6 and 9 hereof, shall terminate on the date on which the final semiannual payment of rent in respect thereof is due hereunder, or would have been due, if liability to pay such amount is canceled pursuant to the provisions of Section 2 hereof.

Notwithstanding anything to the contrary contained herein, all rights and obligations under this Lease and in and to the Units, upon default by the Lessee hereunder, or under the Security Documents in its capacity as Guarantor or otherwise, are subject to the rights of the Vendor under the Security Documents and of the Vendee under the First Lease. If an event of default should occur under the Security Documents, the Vendor may terminate this Lease (or rescind its termination), all as provided therein, or if an event of default should occur under the First Lease, the Vendee may terminate this Lease (or rescind its termination) all as provided therein, in each case, unless the Lessee is not so in default under this Lease and under the Security Documents.

Section 4. Identification Marks. The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Schedule A hereto, or in the case of any Unit not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the name of the Vendor followed by the words "Security Owner" or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's, the Vendor's and Vendee's respective interests in such Unit and the rights of the Lessor under this Lease,

of the Vendee under the First Lease and of the Vendor under the Security Documents. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such name and words shall have been so marked on both sides thereof and will replace promptly any such name and words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor, the Vendee and the Lessor and filed, recorded and deposited by the Lessee in all public offices where this Lease, the First Lease and the Security Documents shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may allow the Units to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use the Units as permitted under this Lease.

Section 5. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Vendee, and the Lessor from collection or other charges and will be free of expense to the Vendee and the Lessor with respect to the amount of any local, state, federal, or foreign taxes (other than (i) any United States Federal income taxes and excess profits taxes [and, to the extent that the Vendee and the Lessor receives credit therefor against their United States Federal income tax liability, any foreign income tax] payable by the Vendee and the Lessor in consequence of the receipt of payments provided for herein, (ii) the net cumulative aggregate amount of all state and local income taxes, franchise taxes, excess profits taxes and similar taxes measured by net income based on the receipt of payments provided for herein, up to the net cumulative amount of such taxes measured by net income based on such receipts which would be payable by the Vendee and the Lessor to the state, city and county where the Vendee and the Lessor have their principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated

to pay or reimburse as herein provided) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title or interest under the terms hereof or the Security Documents, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Vendee and the Lessor solely by reason of its ownership thereof or interest therein and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title or interest of the Vendee and the Lessor or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendee and the Lessor, adversely affect the title, property or rights of the Vendee and the Lessor hereunder or under the Security Documents. If any impositions shall have been charged or levied against the Vendee and the Lessor directly and paid by the Vendee and the Lessor, the Lessee shall reimburse the Vendee and the Lessor on presentation of an invoice therefor; provided, however, that the Lessee shall not be obligated to reimburse the Vendee and the Lessor for any impositions so paid unless the Vendee and the Lessor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendee and the Lessor) or unless the Lessee shall have approved the payment thereof.

In the event that the Lessor shall become obligated to make any payment to the Vendee or otherwise pursuant to Section 5 of the First Lease not covered by the foregoing paragraph of this Section 5, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said Section 5.

In the event any reports with respect to impositions are required to be made, the Lessee will either make such reports in such manner as to show the interests of the Lessor,

the Vendor and the Vendee in such Units or notify the Lessor, the Vendor and the Vendee of such requirement and make such reports in such manner as shall be satisfactory to the Lessor, the Vendor and the Vendee.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this Section 5, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

Section 6. Payment for Casualty Occurrences; Insurance. In the event that any Unit shall be or become worn out, lost, stolen, destroyed (which includes Units that have been on Bad Order [i.e., not maintained or repaired in accordance with standards prescribed by the manufacturer of such Units in its applicable service manuals and maintenance instructions] for a continuous period in excess of six months) or, in the reasonable opinion of the Lessee, irreparably damaged from any cause whatsoever, or taken or requisitioned by condemnation or otherwise for a definite period exceeding the otherwise then remaining term of this Lease (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease, the Lessee shall promptly and fully notify the Lessor, the Vendor and the Vendee with respect thereto. On the rental payment date next succeeding such notice, the Lessee shall pay to the Vendor for the account of the Lessor, a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule set out below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and the Lessee shall be entitled to recover possession of such Unit, subject to the rights of the Vendor under the Security Documents.

The Casualty Value of each Unit as of any rental payment date shall be that percentage of the Purchase Price of such Unit as is set forth in the following schedule opposite such rental payment date:



<u>Payment Date</u>	<u>Percentage</u>	<u>Payment Date</u>	<u>Percentage</u>
January 1, 1975	100.0000	January 1, 1981	77.3704%
July 1, 1975	106.4330	July 1, 1981	74.1143
January 1, 1976	105.9215	January 1, 1982	70.6700
July 1, 1976	105.1678	July 1, 1982	62.4592
January 1, 1977	104.1627	January 1, 1983	58.7927
July 1, 1977	102.8866	July 1, 1983	55.0272
January 1, 1978	101.3436	January 1, 1984	51.1250
July 1, 1978	94.8649	July 1, 1984	47.1168
January 1, 1979	92.7992	January 1, 1985	42.9647
July 1, 1979	90.4821	July 1, 1985	38.6992
January 1, 1980	87.9101	January 1, 1986	34.2822
July 1, 1980	80.4232	July 1, 1986	29.7441
		January 1, 1987	26.2700

Except as hereinabove in this Section 6 provided, the Lessee shall not be released from its obligation hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained fire and extended coverage insurance in respect of the Units at the time subject hereto, and public liability insurance, in amounts (including deductibles) and against risks comparable to those insured against by the Lessee on equipment owned by it and the benefits thereof shall be payable as provided in the Security Documents and the First Lease, and to furnish appropriate evidence of such insurance coverage upon request of the Lessor. Any damages receivable from others, any condemnation payments and any net insurance proceeds in respect of fire and extended coverage insurance carried by the Lessee received by the Lessor in respect of Units suffering a Casualty Occurrence (all hereinafter collectively referred to as Recoveries) shall be deducted from the amounts payable by the Lessee to the Lessor in respect of Casualty Occurrences pursuant to this Section 6. The excess of such damages received from others or condemnation payments, if any, after deduction of such payments received from the Lessee in respect of Casualty Occurrences, shall belong to the Vendee and the excess of such net insurance proceeds, after deduction of such payments received from the Lessee in respect of Casualty Occurrences, shall belong to the Vendee. If the Lessor shall receive any such Recoveries after the Lessee shall have made payments pursuant to this Section 6 without deduction for such Recoveries, the Lessor shall pay such Recoveries to the Lessee to the extent of such payments by the Lessee. Upon payment of the Casualty Value of such Unit, the title to such Unit, subject to the rights of the Vendor under the Security Documents, shall pass to and vest in the Lessee,

All proceeds of fire and extended coverage insurance received by the Lessor in respect of insurance carried on any Unit or Units not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

In the event that during the term of this Lease the use of any Unit is requisitioned or taken by any governmental authority by condemnation or otherwise for a definite period which does not exceed the then remaining term of this Lease or for an indefinite period, the Lessee's obligation to pay rent shall continue for the duration of such requisitioning or taking. The Lessee shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisitioning or taking of possession to an amount equal to the rent paid or payable hereunder for such period, and the balance, if any, shall be payable to and retained by the Vendee as its sole property.

Section 7. Reports. On or before April 15 and October 15 in each year, commencing on April 15, 1975, and continuing until the end of the term of this Lease, the Lessee will furnish to the Lessor, the Vendee and the Vendor an accurate statement (a) setting forth the amount, description and numbers of all Units then leased hereunder and covered by the Security Documents, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding six months (or since the date of this Lease in the case of the first such statement) and such other information regarding the condition and state of repair of the Units as the Lessor, the Vendee or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and the markings required by Section 4 hereof and Article 9 of the Security Documents have been preserved or replaced, and (c) a statement showing the condition of the remaining equipment in actual service as of the reporting date. The Lessor shall have the right by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease. The Lessee shall provide a Schedule of Depreciation in Schedule A.

Section 8. Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have, under the provisions of Section 8 of the First Lease. The Lessee's delivery of a Certificate of Delivery shall be conclusive evidence as between the Lessee and the Lessor that all Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor, the Vendee and the Vendor, to comply in all respect (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that such laws or rules require any alteration of any Unit, or in the event that any equipment or appliance is required to be installed on any such Unit in order to comply with such laws or rules, the Lessee will make such alterations, changes, replacements and additions at its own expense; provided, however, that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor, the Vendee or the Vendor who have received notice thereof, adversely affect the property or rights of the Lessor, the Vendee or the Vendor under this Lease, the First Lease or under the Security Documents.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit in good order and repair, and that if a replacement of power components (such as engines, transmissions and parts thereof) is required, such replacement shall be in accordance with the manufacturer's specifications for such Units.

Any and all additions to any Unit (except, in the case of any Unit which is a locomotive, communications, signal and automatic control equipment or devices having a similar use which have been added to such Unit by the Lessee, the cost of which is not included in the Purchase Price of such Unit and which are not required for the operation or use of such Unit by the Interstate Commerce Commission, the Department of Transportation or any other applicable regulatory body), and any and all parts installed on and additions and replacements made to any Unit shall constitute accessions to such Unit and, at the cost and expense of the Lessee, full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the Security Documents, the First Lease or this Lease) shall immediately be vested in the Lessor, the Vendee and the Vendor as their respective interests appear in the Unit itself.

The Lessee agrees to indemnify, protect and hold harmless the Lessor, the Vendee and the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever (including without limitation, claims based on strict liability in tort), regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of this Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in Section 15 of this Lease. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the termination of this Lease.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor with a copy to the Lessor) any and all reports (other than income tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Vendee or the Vendor of the Units or the leasing thereof to the Lessee by the Lessor. In the event that the Lessor is required to file any income tax return in any state or locality with respect to items of income, deductions and credits attributable to the Units or the rentals hereunder, the Lessee, to the extent reasonably requested by the Lessor shall furnish to the Lessor in connection with such filing, such information as is then available to the Lessee from its books and records.

Section 9. Default. If, during the continuance of this Lease, one or more of the following events (each such event being hereinafter sometimes called an Event of Default) shall occur:

A. default shall be made in payment of any part of the rental provided in Section 2 hereof and such default shall continue for five days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Security Documents and such default shall continue for 25 days after written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied; or

D. any proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder or under the Security Documents under any bankruptcy or

insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions, and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and under the Security Documents shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever for the remainder of this Lease; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or

which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of an 8% per annum discount, compounded semiannually from the respective date upon which rentals would have been payable hereunder had this Lease not been terminated, and (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental, and including, without limitation, (iii) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States or any political subdivision thereof, shall be equal to any portion of the investment credit attributable to 100% of the total cost of the Units (hereinafter called the Investment Credit) allowed by Section 38 and related sections of the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Code), which was lost, not claimed, not available for claim, disallowed or recaptured by or from the Lessor as a result of the breach of one or more of the representations, warranties and covenants by the Lessee in Section 15 or any other provision of the Lease, the termination of this Lease, the Lessor's loss of the right to use any Unit, any action or inaction by the Lessor or the sale or other disposition

of the Lessor's interest in any Unit after the occurrence of an Event of Default.

Anything in this Section 9 to the contrary notwithstanding, any default in the observance or performance of any covenant, condition or agreement on the part of the Lessee, other than the loss of the Units as described in Section 6, which results solely in the loss by the Lessor of, or the loss by the Lessor of the right to claim, or the disallowance with respect to the Lessor of all or any portion of the Investment Credit shall be for all purposes of this Lease deemed to be cured if the Lessee shall, on or before the next rental payment date after written notice from the Lessor of the loss, or the loss of the right to claim, or the disallowance of the Investment Credit, in respect of such Unit, agree to pay to the Lessor the amounts set forth in subsection (iii) above, applicable to the amounts disallowed or recaptured as to the Lessor as a result of said default.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

Section 10. Return of Units Upon Default. If this Lease shall terminate pursuant to Section 9 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:



(a) forthwith place such Units upon such storage tracks of the Lessee as the Lessor reasonably may designate;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee until such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) transport the same to any place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor, the Vendee or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 10, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

Section 11. Assignments; Possession and Use.  
This Lease and the rentals and other sums due hereunder shall not be assignable by the Lessor.

So long as the Lessee shall not be in default under this Lease or under the Security Documents in its capacity as Guarantor or otherwise, the Lessee shall be entitled to the possession and use of the Units in

accordance with the terms of this Lease and the Security Documents, but, without the prior written consent of the Lessor and the Vendor, which shall not be unreasonably withheld, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Lessor, the Vendee or the Vendor not related to the ownership of the Units) upon or with respect to any Unit, including any accession thereto, or the interest of the Lessor, the Vendee, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or encumbrance which arises. This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph; provided, however, that the Lessee may sublease any of the Units for a sublease term not to exceed six months to any person, firm or corporation which is a citizen of, or is organized under the laws of, the United States of America or any state thereof for service in regular operation within the United States of America so long as such sublease shall be subject to the terms and provisions of this Lease. No assignment or sublease entered into by the Lessee hereunder shall relieve the Lessee of any liability or obligation hereunder which shall be and remain those of a principal and not a surety.

So long as the Lessee shall not be in default under this Lease or under the Security Documents in its capacity as Guarantor or otherwise, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract,

and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Lease, the First Lease and the Security Documents; provided, however, that the Lessee shall not assign or permit the assignment of any Unit to service involving the regular operation and maintenance thereof outside the United States of America. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

Nothing in this Section 11 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder and under the Security Documents) into or with which the Lessee shall have become merged or consolidated or which shall have acquired or leased all or substantially all of the lines of railroad of the Lessee, provided that such assignee or transferee will not, upon the effectiveness of such merger or consolidation, be in default under any provisions of this Lease.

Section 12. Return of Units Upon Expiration of Term. As soon as practicable on or after the expiration of the term of this Lease with respect to any Unit, the Lessee will (unless the Unit is sold to the Lessee), at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor, in good order and running condition, normal wear and tear excepted, upon such storage tracks of the Lessee as the Lessee may designate (but in not more than three locations), or, in the absence of such designation, as the Lessor may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor; the movement and storage of such Unit to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Unit, to inspect the same; provided, however, that

the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. If Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or which after the expiration of this Lease the Lessor shall have deemed to have suffered a Casualty Occurrence, it may deliver written notice to such effect to the Lessee and the Lessee shall thereupon assume and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice. The Lessor shall execute and deliver to the Lessee a bill of sale or bills of sale transferring to the Lessee, or upon its order, the Lessor's title to and property in any Unit abandoned by it pursuant to the immediately preceding sentence. The Lessee shall have no liability to the Lessor in respect of any Unit abandoned by the Lessor after termination of the Lease; provided, however, that the foregoing clause shall not in any way relieve the Lessee of its obligations pursuant to Section 6 hereof to make payments equal to the Casualty Value of any Unit experiencing a Casualty Occurrence while this Lease is in effect.

Section 13. Opinion of Counsel. On each Closing Date (as defined in the Security Documents), the Lessee will deliver to the Lessor, the Vendor and the Vendee two counterparts of the written opinion of counsel for the Lessee, addressed to the Lessor, the Vendee and the Vendor, in scope and substance satisfactory to the Lessor, the Vendee and the Vendor and their respective counsel, the effect that:

A. The lessee is a corporation legally incorporated, validly existing and in good standing under the laws of its state of incorporation (specifying the same) with adequate corporate power to enter into the Security Documents and this Lease;

B. the Security Documents and this Lease have been duly authorized, executed and delivered by the Lessee and constitute valid, legal and binding agreements of the Lessee, enforceable in accordance with their respective terms;

C. the Security Documents (and the assignment thereof to the Vendor) and this Lease have been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and such filing and recordation will protect the Vendor's, the Vendee's and the Lessor's interests in and to the Units and no filing, recording or deposit (or giving of notice) with any other federal, state or local government is necessary in order to protect the interests of the Vendor, the Vendee or the Lessor in and to the Units;

D. no consent, approval or filing is required from any public regulatory body with respect to the entering into or performance of the Security Documents or this Lease;

E. the entering into and performance of the Security Documents or this Lease will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessee is a party or by which it may be bound; and

F. no mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interests therein of the Lessee, now attaches or hereafter will attach to the Units or in any manner affects

or will affect adversely the Vendor's, Vendee's or Lessor's respective interests therein; provided, however, that such liens may attach to the rights of the Lessee hereunder in and to the Units.

Section 14. Recording; Expenses. The Lessee will at its own expense cause this Lease, the First Lease, the Security Documents and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, registering, deposit, and recording required of the Vendee under the Security Documents and the Lessor under the First Lease, and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor, the Vendee or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's, the Vendee's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the First Lease, the Security Documents or the assignment thereof to the Vendor; and the Lessee will promptly furnish to the Vendor, the Vendee and the Lessor evidences of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor, the Vendee and the Lessor. This Lease, the First Lease and the Security Documents shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

The Lessee will pay the reasonable costs and expenses involved in the preparation and printing of this Lease and the Security Documents, and the costs and expenses of financing (including legal, money placement and agent fees). The Lessor and the Lessee will each bear the respective fees and disbursements, if any, of their respective counsel.

Section 15. Federal Income Taxes. The Lessor, due to an election by Vendee pursuant to Sections 38 and 48(d) of the Federal Internal Revenue Code of 1954 as amended, shall be entitled to the Investment Tax Credit.

The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing and that each of such corporations will file such returns, take such action and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent thereof. Lessee agrees to keep and make available for inspection and copying by Lessor such records as will enable Lessor to determine whether it is entitled to the full benefit of the Investment Credit, with respect to the Units.

The Lessee's and the Lessor's agreement to pay any sums which may become payable pursuant to this Section 15 shall survive the expiration or other termination of this Lease.

This Lease may be terminated upon 30 days' written notice (hereinafter called a "Notice of Termination") to the Lessee, the Vendee and the Vendor by the Lessor, or to the Lessor, the Vendee and the Vendor by the Lessee, if the Lessee is unable to obtain by November 30, 1974, or if prior to November 30, 1974, the Lessee is advised by the Internal Revenue Service that it will not receive a ruling from the Internal Revenue Service to the effect that (i) this Lease is a lease for federal tax purposes, (ii) the Lessor is the Lessor and the Lessee is the Lessee under the Lease; (iii) the Units constitute "Section 38 Property" with respect to which Vendee is entitled to claim the Investment Credit in respect of the full purchase price of the Units and (iv) the Vendee can make a valid election pursuant to Section 48(d) of the Code to treat Allied as having acquired such property for an amount equal to its fair market value for purposes of the credit allowed by Section 38.

The Lessee agrees that it will apply for and diligently seek a favorable ruling from the Internal Revenue Service. The Lessor and the Vendee shall have the right to review the request for ruling and participate in seeking such ruling if the Lessor or the Vendee desires.

Section 16. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, interest at the rate of three-fourths of one percent ( $3/4$  of 1%) over the applicable rate of interest set out in section 2(b) of the third paragraph of Article 3 of the Security Documents, on overdue rentals for the period of time during which they are overdue or such lesser amount as may be legally enforceable, if such amount is due to the Vendee, under the First Lease.

Section 17. Notices. Any notice required or permitted to be given by either party hereto to the others shall be deemed to have been given when deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

(a) if to the Lessor, c/o Allied Products Finance Corporation, 10 South Riverside Plaza, Chicago, Illinois 60606, Attention:

(b) if to the Lessee, c/o Chicago and North Western Transportation Company, 400 West Madison Street, Chicago, Illinois 60606, Attention Vice President-Finance;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

Section 18. Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Units and supersedes all other agreements, oral or written with respect to the Units. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and the Lessee.



Section 19. Execution. This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Although this Lease is dated as of April 15, 1974, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

Section 20. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

ALLIED PRODUCTS FINANCE  
CORPORATION

By Lloyd Dreyer  
PRESIDENT

ATTEST:

CPH  
Assistant Secretary

CHICAGO AND NORTH WESTERN  
TRANSPORTATION COMPANY

By JM Butler  
Vice President

ATTEST:

GL Vargason  
Assistant Secretary

STATE OF ILLINOIS)

) SS

COUNTY OF COOK )

On this 9<sup>TH</sup> day of Sept. , 1974, before me personally appeared LLOYD DEXLER , to me personally known, who, being by me duly sworn, says that he is PRESIDENT of ALLIED PRODUCTS FINANCE CORPORATION, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Jack C. Bury  
Notary Public

[Notarial Seal]

My Commission Expires 9-8-76

STATE OF ILLINOIS )

) SS

COUNTY OF COOK )

On this 5<sup>th</sup> day of Sept 1974, before me personally appeared J.M. BUTLER , to me personally known, who, being by me duly sworn, says that he is VICE PRESIDENT of CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

J.M. Butler  
Notary Public

[Notarial Seal]

My Commission Expires Sept 29, 1977  
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# SCHEDULE A

<u>Type</u>	<u>Quantity</u>	<u>Specifi- cations</u>	<u>Manufacturer's Plant</u>	<u>Road Numbers (both inclusive)</u>	<u>Unit Base Price*</u>	<u>Total Base Price</u>	<u>Delivery</u>
Model SD 40-2 3000 H.P.	25	8087	LaGrange, Illinois	6866 to 6890	\$374,142	\$9,353,550.00	Prior to 12-31-74

The first month following a closing the locomotives  
will be depreciated monthly in accordance with  
I.C.C. rules at an annual rate of 4.63%.

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\*Unit base price includes \$288.00 per unit prepaid freight and \$9,615.00 for  
train control equipment.

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